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New Laws on the Books

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New Laws on the Books

After the regular legislative session, the TCEQ takes stock of the new laws that will affect the agency and its environmental programs.

Legislature funds agency programs for another two-year cycle

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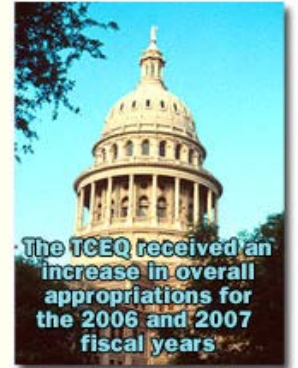
[Sidebar: Initiatives in Resource Conservation](#)

State lawmakers have provided the TCEQ the means to maintain all of its current programs and to adjust some existing strategies that address air and water quality and waste management.

About 192 bills enacted in the 79th legislative regular session will affect the agency, including measures that continue the grant program for reducing diesel emissions and provide an extension for cleaning up petroleum storage tanks. Many of the new laws will require the agency to undertake actions such as rule making or operational changes.

The TCEQ received an increase in overall appropriations for the 2006 and 2007 fiscal years, though staff positions will be slightly reduced.

Some of the bills having an impact on the TCEQ and its programs are highlighted below. Most take effect Sept. 1 with the new biennium.



AIR QUALITY

TERP Grants (HB 2481)

The Texas Emissions Reduction Plan (TERP) was extended by two years—to 2010—to continue providing economic incentives for voluntary reductions of nitrogen oxides (NOx), a component of ozone. The Legislature appropriated about \$128 million a year.

Annual Distribution of TERP Funds

NOx reductions: \$116.3 million for grants
\$684,000 for administration

R&D: \$11.3 million for grants
\$250,000 for administration

Total: \$128.5 million

The program, which makes grants available to several areas dealing with ozone problems, is a significant component of the TCEQ's air quality improvement plans and is included in the State Implementation Plan. The SIP encompasses regional and statewide strategies for reducing ozone and complying with federal standards.

The TERP focuses on high-emissions diesel sources such as heavy-duty vehicles, stationary equipment, and large nonroad equipment (construction equipment, locomotives, and marine vessels).

Since the program began in 2002, a total of 481 projects have been funded, representing \$125.3 million in grants. Another 219 proposed grant projects, totaling \$61.5 million, were under consideration on July 1, when 560 more applications were received.

The legislation alters the allocation and administration of TERP funds, which are derived from the vehicle title transfer fee and several other fees. In September 2005, the Texas Environmental Research Consortium (TERC) of Houston will assume the responsibility for the TERP's New Technology Research and Development (NTRD) program under a contract with the TCEQ. The NTRD supports new technologies, such as improved efficiency in diesel fuel, that lower emissions and have the potential to succeed in the marketplace.

NTRD will see a funding boost after September 2008: a jump to 33 percent of TERP funds from the current 9.5 percent. At that time, the allocation of these funds will be shared by the TERC and the TCEQ, with a portion targeting

air quality research in the Houston and Dallas–Fort Worth areas.

Also in September 2008, the allotment for diesel emission reductions will fall to 64 percent of funds from the current 87.5 percent. These grants will continue to be administered by the TCEQ. The agency will establish cost-effective limits on awards for locomotives and marine vessels. A pilot rebate program also will be created.

Separate from the TERP, the TCEQ is required to adopt, with specified changes, state rules based on the new federal Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule.

CAIR was designed by the Environmental Protection Agency to permanently cap the growth of NOX and sulfur dioxide emissions in the eastern United States. The mercury rule is intended to permanently cap and reduce emissions from coal-fired power plants.

The TCEQ also is required to study the cost and availability of technology to control mercury emissions, the impact of having a cap-and-trade emissions system, and the potential of creating local "hot spots" of contamination.

Mercury Vehicle Switches (HB 2793)

The TCEQ will oversee a program to recover convenience light switches from cars and trucks that are about to be turned into scrap metal. These switches, which are located under the hood or in the trunk, contain mercury and are a target of EPA's expanding program to reduce mercury emissions.

If not removed from a vehicle prior to shredding at a recycling facility, the switches can contaminate reclaimed metals. As the metals are processed in furnaces, the mercury is vaporized and released into the air. Some car makers have already phased out use of the mercury switches.

The bill calls for auto manufacturers to develop a program to remove, store, and recycle these switches from end-of-life vehicles. The manufacturers will be responsible for paying the packaging, shipping, and recycling costs, and for providing storage containers to recyclers and scrap metal facilities.

Vehicle Repairs and Retirements (HB 1611)

Financial assistance to repair or retire high-emitting vehicles will continue, with funding set at \$4 million a year. The program helps low-income vehicle owners with repairs or replacements when their cars or trucks fail the required state emissions examination. Because tailpipe exhaust contributes to ozone formation, vehicles in some areas must pass the emissions test to receive a state inspection sticker.

Fifteen counties in and around Houston, Dallas, Fort Worth, and El Paso are required to conduct the annual tests on gasoline-powered vehicles that are 2 to 24 years old. All but El Paso provide assistance to low-income vehicle owners.

The legislation revises eligibility requirements, so that vehicle owners who have lived in the county for only one year, rather than two, may now apply for assistance. The bill also removes the 5-percent cap on county administrative costs.

In the 2004 fiscal year, vehicle owners submitted about 9,230 requests for assistance. Of these, 7,580 received vouchers totaling \$4.3 million. In addition, 350 vehicles were retired, with the state paying \$350,000 toward replacement vehicles.

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WATER

Groundwater Districts (HB 1763)

Legislation establishes uniform hearing procedures and notice requirements for groundwater conservation districts for rulemaking and permit applications. These districts are authorized to adopt rules and issue permits necessary for managing groundwater resources within their boundaries.

Texas has 83 groundwater districts—all created by legislation and confirmed by local elections. Another four districts have been created but not yet confirmed; seven more were created this year in legislation.

The bill also addresses management planning by directing districts in the same groundwater management area to manage shared aquifers uniformly and by requiring joint management planning among neighboring districts. The TCEQ may take action against a district to compel joint management.

Septic Systems (HB 2510)

The TCEQ will have more oversight of the companies and homeowners responsible for maintaining septic systems, also called on-site sewage disposal systems. The companies will have to be licensed or registered with the agency, and could face penalties for improper maintenance of septic systems. The TCEQ will adopt rules for training standards.

The legislation also gives homeowners the right to maintain their own aerobic on-site septic systems, and makes them subject to the same requirements for maintenance and reporting that professional providers must follow. To maintain their own systems, homeowners must be certified by a manufacturer.

The bill also addresses problems that occur when inspection and maintenance operators do not fulfill their contractual obligations. Previously, the TCEQ lacked the means of penalizing companies that fail to do the required inspections and maintenance.

Water Utilities (HB 2876)

The process of creating and maintaining certificates of convenience and necessity (CCNs) is about to undergo some changes, including giving landowners a greater voice in requesting or consenting to the service.

A CCN is required before a retail water or sewer utility can begin providing service to the public in a specified area.

Under terms of the legislation, the TCEQ—in most cases—cannot issue a CCN in or near a municipality of 500,000 or more unless the municipality has consented to the permit. Also, landowners will be able to petition to be removed from a CCN if the public service is deemed insufficient.

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POLLUTION CLEANUP

Petroleum Storage Tanks (SB 485, SB 1863, HB 1987)

The legislation extends the program that reimburses eligible parties who have met the statutory deadlines for cleaning up leaking underground petroleum storage tanks (PSTs).

Now, all remediation work must be completed by Sept. 1, 2007. The final date for the TCEQ to reimburse parties conducting corrective actions at a PST site will be Aug. 31, 2008, if the applicant made a good faith effort to complete clean-up requirements by the original September 2005 remediation deadline.

When applicants cannot complete all corrective actions by the 2007 deadline, those sites will be placed in the TCEQ's PST State-Lead Program. Under that program, state contractors conduct remediation at PST sites not addressed by the tank owners or operators.

Leaking PSTs that were discovered and reported by late 1998 are covered by the remediation fund.

As of this spring, about 24,000 leaking PST sites—mostly at gasoline stations—had been reported to the TCEQ. Cleanup had been completed at about 19,800 sites, and remediation was under way at about 4,200 sites. Of the total reported, almost 9,000 sites have affected groundwater. The TCEQ oversees remediation at these sites until cleanup is completed.

Dry Cleaners (HB 2376)

As a result of legislation passed in 2003, the TCEQ began collecting fees for a new remediation fund designed to help pay for the cleanup of contaminated dry cleaner sites. The fees are associated with the annual registration of facilities and the sale of perchloroethylene and other dry cleaning solvents.

As of May 31, about 1,840 dry cleaning facilities and 1,280 drop stations had registered with the TCEQ, and roughly \$10 million had been collected for the fund. About 19 percent of registered facilities have opted out of the remediation fund, saying they never used perchloroethylene.

The agency is assessing about 30 sites to determine whether remediation is required.

The follow-up legislation made a number of adjustments and clarifications, such as allowing the registration fees to be paid quarterly and extending the deadline to Feb. 28, 2006, for dry cleaners to opt out of the fund. Also, distributors of solvents will be required to register with the agency.

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Funding for TCEQ Programs

The agency's revenue structure undergoes a major change in the 2006–2007 appropriations bill. General revenue will drop significantly in the next biennium, though overall funding will actually be higher.

The Legislature set general revenue at about \$9.6 million, compared to the \$46.6 million for the biennium ending Aug. 31. The decrease will be offset by an appropriation from fund balances in the Water Resource Management Account, in which water program fees are deposited.

Traditionally, the majority of the TCEQ's general revenue has been used to support agency water programs.

Overall, agency appropriations were set at about \$976 million for the next two-year cycle, an increase from the

2004–2005 level of \$931.4 million.

As with most state agencies, the TCEQ will be required to trim full-time equivalents by 2 percent, or about 60 staff positions.

State employees will receive pay raises of 4 percent this September, followed by a 3–percent hike a year later.

Significant revisions in appropriations include:

- **Petroleum storage tanks:** a near–\$66 million increase to continue the cleanup and reimbursement program two years beyond the current expiration date. A supplemental appropriations bill allotted an additional \$25 million for the 2005 fiscal year.
- **Low-level radioactive waste:** an additional \$750,000 for activities related to the licensing of a proposed disposal site in West Texas.
- **Watermasters:** a \$490,000 increase to support a new watermaster program for the Concho Valley and for the activities of two existing watermaster offices.
- **River Compact Commission:** a \$650,000 transfer in general revenue to support and manage the functions of this agency, as spelled out in a memorandum of understanding.
- **Title V air permitting:** a \$7 million cut in anticipation of reduced fee collections.
- **Low-income vehicle repair assistance:** a \$12 million reduction in the repair program for high-emitting cars and trucks for a projected biennial total of \$8 million, which matches expenditures over the last two fiscal years.

TCEQ Appropriations, All Funds

	Current FY05	Next Biennium	
		FY06	FY07
Appropriations (millions)	\$463.9	\$505*	\$471*
Staff positions (FTEs)	3,039.5	2,997**	2,997**

**Does not include employee pay raises*
***Does not reflect the 2-percent FTE reduction*

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